

In The Matter Of:
United States vs.
PFC Bradley E. Manning

Vol. 20
July 19, 2013
UNOFFICIAL DRAFT - 7/19/13 Afternoon Session

Provided by Freedom of the Press Foundation

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VOLUME XX

IN THE UNITED STATES ARMY

UNITED STATES

VS.

MANNING, Bradley E., PFC COURT-MARTIAL

U.S. Army, xxx-xx-9504

Headquarters and Headquarters Company,

U.S. Army Garrison,

Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

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The Hearing in the above-entitled matter was continued on Friday, July 19, 2013, commencing at 1:30 p.m., at Fort Meade, Maryland, before the Honorable Colonel Denise Lind, Judge.

DISCLAIMER

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1 **APPEARANCES:**

2
3 **ON BEHALF OF GOVERNMENT:**

4 MAJOR ASHDEN FEIN

5 CAPTAIN ANGEL OVERGAARD

6 CAPTAIN HUNTER WHYTE

7
8
9 **ON BEHALF OF ACCUSED:**

10 DAVID COOMBS

11 CAPTAIN JOSHUA TOOMAN

12 MAJOR THOMAS HURLEY

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1 PROCEEDINGS,

2 (Reconvened at 1:40 p.m.)

3 THE COURT: Major Fein?

4 MAJOR FEIN: Ma'am, the United States does
5 not have any further evidence to offer in rebuttal.

6 THE COURT: We have a surrebuttal case?

7 MR. COOMBS: Yes, Your Honor. First we
8 would have a judicial notice.

9 CAPTAIN TOOMAN: The government offered
10 as prosecution I believe it's 194 Charlie, a tweet
11 from Wikileaks. Wikileaks is currently under an
12 aggressive U.S. and Icelantic surveillance operation
13 followingphotographing/filming/detaining. The
14 defense objected to that. We didn't believe it was
15 probably rebuttal.

16 We didn't feel that actually rebuts idea
17 that Wikileaks is a legitimate journalistic
18 organization. The Court overruled that. We still
19 don't think that has any bearing whether or not
20 Wikileaks is a journalistic organization, but I
21 guess we're presuming what the government would or

1 the connection they would try to make would be that
2 if because Wikileaks is under surveillance by the
3 United States they are know a legitimate
4 journalistic organization.

5 To rebut that we have Defense Exhibit
6 Whiskey Whiskey for identification, which are three
7 records pulled from the FBI records vault, official
8 records from the FBI where they outline basically
9 that they kept records of Mike Wallace, Ernst
10 Hemingway, as well as Paul Harvey.

11 In the descriptions they refer to these
12 individuals as journalists, and so we would offer
13 this to rebut the ideas.

14 I guess our position is, clearly the
15 United States does to investigations or surveillance
16 on people, important legitimate members of the media
17 and journalists, and so the idea that one isn't a
18 legitimate journalist because they are surveilled
19 would be rebutted by and this.

20 THE COURT: I thought that the relevance
21 was that was on PFC Manning's computer what PFC Manning

1 thought about Wikileaks?

2 THE WITNESS: Our understanding was that it
3 offered to rebut the idea that Wikileaks is a
4 journalistic organization. It is our understanding of
5 why the government offered these tweets.

6 THE COURT: Government, why did you offer
7 the tweets?

8 MAJOR FEIN: Ma'am, the United States
9 offered the tweets for actually both the reasons, but
10 it's what PFC Manning knew or would have known at the
11 time because it was on his computer.

12 This is not relevant because there's no
13 evidence that PFC Manning went to the FBI website
14 and viewed this information. There was no evidence
15 that any of these three members, these three
16 individuals, were on his computer had information
17 about them.

18 So it's about what PFC Manning knew at
19 the time he commissioned the offenses, because the
20 information we offered was found on his computer is
21 a permissible inference that he would have known

1 that information.

2 THE COURT: Captain Tooman, let me see the
3 exhibits.

4 MR. TOOMAN: We didn't include the actual
5 records. They were very voluminous, hundreds of pages
6 in some cases. So for our purposes the fact that the
7 records exist in our mind is what rebuts the
8 government's contention that Wikileaks isn't a
9 legitimate journalistic organization.

10 THE COURT: Well, does the government have
11 any objection to this?

12 MAJOR FEIN: Well, the objection is
13 relevance, Your Honor. The Court taking judicial
14 notice of facts that are not at least related to an
15 element of the offense. It's not relevant.

16 MR. TOOMAN: I guess, Your Honor --

17 THE COURT: It really isn't relevant.

18 MR. TOOMAN: Our belief is that the
19 government offering this tweet as proof that Wikileaks
20 either was or was not a legitimate journalistic
21 organization, and I guess we would ask for them to

1 articulate how this tweet, the substance of this tweet,
2 could inform that decision, and if they're -- when
3 we're figuring out whether or not Wikileaks is a
4 legitimate journalistic organization or not, government
5 has offered this tweet to say that this is proof that
6 they're not a legitimate journalistic organization.

7 If they're not doing that then we
8 wouldn't request that these --

9 THE COURT: You said you're offering for
10 both purposes; is that correct?

11 MAJOR FEIN: By both, Your Honor, I mean,
12 it's ultimately what PFC Manning knew at the time. So
13 we are offering to show that PFC Manning, by the
14 greater weight of the evidence, would have known that
15 Wikileaks was not a legitimate news organization based
16 on the evidence that was in front of him.

17 THE COURT: Are you also offering it to
18 rebut Professor Bangler's testimony that in actuality
19 is a legitimate or was at the time a legitimate news
20 organization --

21 MAJOR FEIN: Ma'am, we've --

1 THE COURT: -- before the state?

2 MAJOR FEIN: Essentially, ma'am, it's sort
3 of in the hands or the eyes of PFC Manning. That's
4 what we contest to Professor Banglar's relevance from
5 the get-go. It's only what PFC Manning new or didn't
6 know. Whether it was or wasn't, it's his knowledge.
7 So the government didn't.

8 Then consistent with entire time he
9 states all about what he did or didn't know, and the
10 evidence has to relate back to him.

11 THE COURT: I'm asking my question again.
12 I asked you the first time and you said it was for
13 both. Do you rebut the fact that it is or isn't a
14 legitimate news organization?

15 MAJOR FEIN: The reason I said both, I
16 apologize, is because it's a hybrid of the two. We're
17 offering it to show that PFC Manning knew it was not a
18 legitimate news organization, not in general it was or
19 was not. It's PFC Manning's knowledge of it.

20 THE COURT: Is this the only exhibit?

21 MR. TOOMAN: There should be three records.

1 THE COURT: There are three records in this
2 exhibit?

3 CAPTAIN TOOMAN: Yes, ma'am.

4 I guess in response to the government --

5 THE COURT: Rather than prolong it, I'll go
6 ahead and admit it. Go ahead.

7 MR. COOMBS: Your Honor, the defense calls
8 CW2 Kyle Balonek back to the stand.

9 Chief Balonek, if you would please just
10 walk to the witness stand and have a seat.

11 DIRECT EXAMINATION BY MR. COOMBS:

12 BY MR. COOMBS:

13 Q Chief Balonek, I'll just remind you you're
14 still under oath.

15 A Yes, sir.

16 Q Just to refresh your memory on your
17 position at the time of the deployment. Right before
18 the deployment, what was your rank?

19 A I was a staff sergeant.

20 Q And with regards to in the garrison, what
21 was your position?

1 A I was the personnel security manager.

2 Q Now, in garrison did PFC Manning ever make
3 any disloyal comments to you?

4 A No, sir.

5 Q Within your section, who did PFC Manning
6 report to?

7 A Reported to Specialist Showman, sir.

8 Q Who did Specialist Showman report to?

9 A At that time it was Sergeant Mitchell, sir.

10 Q And who did Sergeant Mitchell report to?

11 A Before I went to Master Analyst it was
12 (INAUDIBLE) Atkins. One of the master analysts was
13 Sergeant Atkins. Normally it would have been myself,
14 sir.

15 Q While in garrison, did Specialist Showman
16 ever report through the chain of command that she
17 believed that PFC Manning made disloyal comments?

18 A Not to my knowledge, sir.

19 Q While in garrison, did you have hear any
20 allegation that PFC Manning made disloyal comments?

21 A I did not, sir.

1 Q Would this be something that would you
2 expect to hear if it the involved one of your soldiers?

3 A I would, sir.

4 Q And why is that?

5 A It goes against the ultimate enlisted man,
6 bearing true faith allegiance to the United States.

7 Q If something like this did happen as a
8 noncommissioned officer at the time would you expect to
9 see it in the counseling statement?

10 A I would, sir.

11 Q Why is that?

12 A It's seems to be something that needs to be
13 addressed through some sort of counseling, whether it
14 be written or verbal, sir.

15 Q When you're deciding on written or verbal,
16 as a noncommissioned officer is there a difference in
17 your mind as to some things you might do verbal and
18 some things you might reduce to writing?

19 A There can be, yes, sir.

20 Q And generally what are the types of things
21 you reduce to writing?

1 A Mainly bigger things like if you're
2 consistently late or if there's patterns of misconduct
3 that need to be addressed or written like smaller
4 things, like maybe one time late or missing a formation
5 can be addressed through verbally, sir.

6 Q And the idea -- have you ever heard of the
7 phrase, if it's not right it didn't happen?

8 A I have, sir.

9 Q What does that mean to you?

10 A If you're trying to prove say a pattern of
11 misconduct against a soldier, if there's no supporting
12 documentation, i.e., a counseling statement, then
13 there's nothing really that can be gone off of.

14 Q And from a analyst standpoint would
15 disloyal comments to America be something small that
16 you just handle verbally or something big that you
17 would want to have in writing?

18 A I would find it something that I'd want to
19 have it in writing, sir.

20 MR. COOMBS: No further questions.

21 THE COURT: Cross?

1 CROSS EXAMINATION BY CAPTAIN OVERGAARD:

2 BY CAPTAIN OVERGAARD:

3 Q Chief Balonek, you worked with him in
4 garrison?

5 A Yes.

6 Q When was that?

7 A From the time she go there. Maybe
8 2008/2009 to when I left in 2010.

9 Q That was after the deployment?

10 A During. I left during to go to attend
11 WOCS.

12 Q And how often did you and Ms. Showman
13 interact?

14 A Maybe a daily basis, but interaction may
15 have been more than just saying hello or how was your
16 day.

17 Q Was that the same in garrison as it was in
18 theater?

19 A A little difference in theater. We
20 interacted using the targeting basis, but it varied,
21 ma'am.

1 Q And based on that relationship, did you
2 have an opinion about whether or not Ms. Showman was
3 truthful?

4 A Yes.

5 Q And what is that opinion?

6 A I found her truthful. She never gave a
7 reason not to trust her.

8 Q Would you believe her if she testified
9 under oath?

10 A I would, ma'am.

11 Q And did she have a reputation for
12 truthfulness in 2010 during that time?

13 A Yes.

14 Q Which one? So do you know what the
15 reputation was?

16 A It was for truthfulness, ma'am.

17 Q And you said that you're at the Master
18 Analyst course, when was that?

19 A I think it was from July of '09 to
20 September of '09, ma'am.

21 Q So you weren't around in August 2010?

1 A I was not. I was in Fort Huachuca.

2 Q And then a few weeks after you returned in
3 September of 2010, you deployed to Iraq in 2010.

4 A Yes, ma'am.

5 Q So you barely had time to pack?

6 A That's about right, ma'am, yes.

7 Q You said you would have expected to hear
8 about the -- I said 2010, I meant 2009. That was
9 correct, right, 2009?

10 A Yes, ma'am.

11 Q I confused you too. So it was August of
12 2009 that you were gone?

13 A That's correct.

14 Q And your master analyst course from July to
15 August of 2009?

16 A Yes, ma'am.

17 Q And you said you would have expected to
18 hear about this statement, but you actually weren't
19 around at that time?

20 A That's true.

21 Q And you would have expected Ms. Showman to

1 bring it to Staff Sergeant Mitchell who was her
2 immediate supervisor?

3 A Yes, ma'am.

4 Q And then Master Sergeant Atkins in your
5 absence?

6 A Correct.

7 Q And you don't know whether or not
8 Ms. Showman brought this statement to Staff Sergeant
9 Mitchell?

10 A I really do not, ma'am.

11 CAPTAIN OVERGAARD: Thank you.

12 REDIRECT EXAMINATION BY MR. COOMBS

13 BY MR. COOMBS:

14 Q With regards to the opinion and reputation
15 testimony. The opinion testimony, what are you basing
16 that on?

17 A Just my own judgment, sir.

18 Q And I wanted to get an idea of that just
19 because sometimes people have an opinion on
20 truthfulness and it's because they've known the person
21 for a long time or they --

1 CAPTAIN OVERGAARD: Objection, leading.

2 THE COURT: You're giving just examples.

3 MR. COOMBS: Yes, ma'am.

4 THE COURT: Go ahead.

5 BY MR. COOMBS:

6 Q So they know the person for a long time or
7 they deal with them like hours on end a day and that
8 person tells them a lot of different themes and she see
9 the through a pattern. So I wanted to get an idea from
10 you which of those --

11 THE COURT: Not which of those.

12 BY MR. COOMBS:

13 Q Which of those, if any, or some other one
14 is what you base the opinion of truthfulness on?

15 A Sir, I base the opinion on the fact that if
16 a person does not give me a reason not to trust them, I
17 find them trustworthy sir.

18 Q So you said you had so contact with the
19 (INAUDIBLE), how much contact would you have with her
20 on a daily basis?

21 A It varied on how the report was coming and,

1 sir, what targeting needed from fusion or what fusion
2 may have needed from targeting. It could have once or
3 twice a day. It could have been not at all.

4 Q Based upon that contact I guess did you
5 feel that you got to know her well?

6 A Well enough as a coworker, yes.

7 Q Would you consider her a friend?

8 A I would not, sir.

9 Q And if someone asked you to describe her as
10 somebody that you know very well or somebody that you
11 just know of, or I guess any variation, how would you
12 describe her?

13 A Restate the question, sir.

14 Q If someone asked you if -- she is somebody
15 that you know very, very well, or is she somebody that
16 is just as an acquaintance that you see only at work or
17 is she somewhere in the middle? How would you describe
18 her?

19 CAPTAIN OVERGAARD: Objection, leading.

20 THE COURT: Overruled.

21 THE WITNESS: Maybe somewhere in the

1 middle, sir.

2 BY MR. COOMBS:

3 Q And then the opinion, testimony you were
4 asked about an opinion. I guess that's an opinion
5 within the unit?

6 A I was basing on my opinion, sir.

7 Q I'm sorry, reputation. I'm confused. The
8 reputation testimony. You said she has a reputation
9 for being truthful?

10 A I was speaking how I saw it, sir.

11 Q So with regards to reputation, that's not a
12 reputation in the unit that you're aware of?

13 A I can't speak for the unit, sir.

14 Q Do you know of any reputation like when
15 someone says that person has a reputation for X or for
16 Y, did then Specialist Showman have a reputation that
17 you're aware of?

18 A Not that I know of, sir.

19 CAPTAIN OVERGAARD: No further questions,
20 ma'am.

21 THE COURT: Temporary or permanent.

1 MR. COOMBS: Temporary.

2 THE COURT: Mr. Balonek, you're temporary
3 excused. Same rules apply.

4 THE WITNESS: Yes, ma'am.

5 MR. COOMBS: Your Honor, the defense calls
6 Mr. Paul Atkins to the stand.

7 If you would walk to the witness stand
8 and turn and face the trial counsel and raise your
9 right hand.
10 Whereupon,

11 PAUL ATKINS,
12 called as a witness, having been first duly sworn to
13 tell the truth, the whole truth and nothing but the
14 truth, was examined and testified as follows:

15 DIRECT EXAMINATION BY MR. COOMBS:

16 BY MR. COOMBS:

17 Q Now, Mr. Atkins, you used to be in the
18 military; is that correct?

19 A Yes, sir.

20 Q When can you retire?

21 A Twenty-eight February 2013.

1 Q And how long were you in the military?

2 A Over 21 years.

3 Q At the time when you retired, what was your
4 rank?

5 A Sergeant First Class.

6 Q In the 2008 through 2010 time frame, so
7 just those two years, were you the NCOIC for the S2
8 section of section BC of the 10th Mountain Division?

9 A Yes, sir.

10 Q As the NCOIC were you responsible for
11 supervision of all enlisted soldiers in the S2 section?

12 A Yes, sir.

13 Q And was one of those soldiers PFC Manning?

14 A Yes, sir.

15 Q And was another one of those Specialist
16 Showman?

17 A Yes, sir.

18 Q While in garrison did PFC Manning ever make
19 any statements to you that indicated that he had a lack
20 of loyalty to the United States?

21 A I don't recall him saying so.

1 Q When you say you don't recall, are you
2 saying you don't remember or you don't believe that it
3 had happened?

4 A I don't remember, sir.

5 Q Is that something you think you would
6 remember?

7 A I would hope, but I do not remember, sir.

8 Q Would statements about being disloyal to
9 America result in a suspension of a security clearance
10 for an intel analyst?

11 A Certainly an investigation, yes.

12 Q And why is that?

13 A Because having access to classified
14 information and then stating that you're disloyal to
15 the country that holds the classified information could
16 be considered a security risk.

17 Q As the NCOIC of the S2 section, would you
18 want an analyst serving in your section if they had no
19 loyalty to the country?

20 A No, sir.

21 Q And why is that?

1 A Because they're a security risk.

2 Q Would you want them to have access to
3 classified information?

4 A No, sir.

5 Q And, again, why?

6 A Because they're a security risk, sir.

7 Q So if you had that information on a
8 particular soldier, what would you do?

9 A In the case of 2008 I would have gone to
10 Major Clossan because we were looking to deploy and
11 discussed it with him and determined whether we should
12 forward this information up the chain to have him not
13 deploy or possibly remove the security clearance or
14 something along those lines.

15 Q So if I'm understanding you correctly, if
16 you're aware of the issue you would do something to
17 determine should we keep the soldier, keep the
18 clearance, deploy him or not; is that correct?

19 A Could you rephrase, please?

20 Q Based upon what you just said, am I correct
21 in understanding you that if you had this allegation or

1 concern about a particular soldier you would have taken
2 it to your supervisor, then Major Clossan, I guess is
3 what you said?

4 A Yes, sir.

5 Q And you would have made a decision at that
6 point whether to remove the soldier's clearance,
7 whether to keep the soldier in the Army I guess or
8 deploy him; is that right?

9 A Well, it wasn't our decision exclusively,
10 however, we would have made the recommendation one way
11 or the other in regard to any number of possible
12 solutions.

13 Q All right. So have you ever had an
14 allegation against one of your analysts that they made
15 disloyal comments, to your memory?

16 A Not that I recall, no, sir.

17 Q Would that be a significant thing for you?

18 A Yes, sir.

19 Q And would that be a significant thing in
20 your field as an intel analyst?

21 A Yes, sir.

1 Q And can you explain to Colonel Lind why
2 that would be significant to you and significant in
3 your field?

4 A It would be significant because the soldier
5 would be -- would pose a security risk as well as
6 possible maybe unsuitable to serve in a combat zone,
7 ma'am.

8 Q Would that person potentially be a
9 unsuitable to be an intel analyst?

10 A Yes, sir.

11 Q Now, prior to his arrest in Iraq in May of
12 2010, did Specialist Showman ever report to you that
13 PFC Manning made statements that indicated a lack of
14 loyalty to the United States?

15 A I don't recall what she did.

16 Q When you say you don't recall, are you
17 saying you don't remember or you don't believe that's
18 true?

19 A I don't remember, sir.

20 Q Prior to his arrest in Iraq in May of 2010,
21 did then Specialist Showman ever report to you that PFC

1 Manning made statements that the America flag meant
2 nothing to him?

3 A Again, I don't recall and I don't remember,
4 sir.

5 Q Prior to his arrest in Iraq in May of 2010,
6 did Specialist Showman tell you that she believed that
7 PFC Manning was a spy?

8 A I don't recall and I don't remember, sir.

9 Q Well, actually before I ask this, can you
10 tell me right now, as you sit on the stand, why you
11 think you don't recall and don't remember that?

12 A I mean -- there could have been any number
13 of reasons, but I have been diagnosed with memory loss.

14 Could you repeat the time frame that these
15 statements were allegedly made, sir, so because I
16 believe if -- if I recall correctly, as far as the time
17 frame, we were looking at either packing out for
18 deployment or something along those lines.

19 So I may have been that I was involved in
20 other things. So I can't specify directly why I would
21 not recall nor remember why Specialist Showman said

1 those things, sir.

2 Q So let me break your answer down just a
3 little bit. First, I was unaware of any memory issues.
4 So what memory issues do you have?

5 A In 2004 I suffered from a fall while in
6 Iraq. In 2005 and 2006 and probably earlier I began to
7 have short-term long-term memory loss as well as sort
8 of like spaces where I would lose time.

9 I would get lost without being on post and
10 so I had a neuropsych exam in 2006 which indicated -- I
11 mean, she didn't have a baseline by which to go, but
12 indicated there may have been some sort of memory loss
13 or damage induced by my fall.

14 Then in 2009 or 2010 I think I had another
15 exam and that indicated that there was some
16 deterioration or lowering of my capabilities for memory
17 from the 2006 tests, sir.

18 Q And was any of this known by your command?

19 A Yes, sir.

20 Q And did you feel like I guess in the 2009
21 time frame when you were preparing to deploy if this

1 impacted your ability to do your duties?

2 A In 2006 I raised the concern to my chain of
3 command, but I was deemed fit to deploy in 2006 and
4 deployed and deployed again in 2009, 2010, sir.

5 Q And then you also indicated because of the
6 deployment you were focused on that stuff and you might
7 not remember?

8 A That could have been reason as well, yes,
9 sir.

10 Q Now, as a NCOIC all of your years was as an
11 enlisted I take it, right?

12 A Yes, sir.

13 Q So when something significant happens, do
14 you train your soldiers to document that in a
15 counseling statement?

16 A Could you please rephrase?

17 Q Yes. If something significant happens, an
18 important issue, would you train your NCOs that that
19 important issue needs to be documented in some way, on
20 writing, on paper?

21 A I mean, at some point, yes, of course.

1 Q I take it that if an analyst said they were
2 disloyal to America and the flag meant nothing to them,
3 would that be a significant event in your mind?

4 A Yes.

5 Q And would you instruct whoever saw that or
6 heard that to reduce that in writing in a counseling
7 statement so there's some paperwork to rely upon?

8 A Likely, yes.

9 Q And I guess if that was done where you had
10 something that was written then I guess regardless of
11 your memory we could look at what was written three
12 years later and see what allegedly happened?

13 A Yes, sir.

14 Q In this case, did you ever see a written
15 sworn statement, excuse me, a written counseling
16 statement regarding any alleged disloyal comments by my
17 client?

18 A I don't recall having seen one, sir.

19 Q And when you say recall again, is this you
20 don't remember or you don't believe that you've seen
21 any paperwork that has it?

1 A I don't remember again, sir.

2 Q If no paperwork exists, what would that
3 tell you as the NCOIC regarding whether or not this
4 happened?

5 A It wouldn't necessarily prove or disprove
6 the event. It would be something that I would -- I
7 would certainly I guess encourage the supervisor to
8 write up, but it wouldn't necessarily -- the absence of
9 a counseling statement would not necessarily lead me to
10 believe that an event did not happen, simply that for
11 whatever reason it was not written in writing.

12 And I understand that the use of counseling
13 statements which is to record events and record the
14 ability of the noncommissioned officer, or whomever, to
15 indicate how this might be corrected; but, again, it
16 doesn't necessarily indicate to me that the lack of a
17 counseling statement meant that an event did not occur.

18 Q And I think you said on earlier if you were
19 aware of something you would take it up through your
20 chain to Major Clossan. Is that the person you said?

21 A Depending on the what I thought would be

1 the importance, yes, sir.

2 Q And if you took it to Major Clossan, like
3 if you actually raised the issue with him, would there
4 be any sort of documentation to support that that
5 happened?

6 A Not necessarily. I mean, I briefed Major
7 Clossan or the S2 or whomever I dealt with regularly on
8 a daily basis pertaining to all personnel issues,
9 equipment issues, management, deployment,
10 deplorability, anything a noncommissioned officer in
11 charge normally deals with and normally should keep --
12 should inform his OIC of, I spoke with Major Clossan
13 about.

14 I didn't have -- I didn't feel the need to
15 bring him a counseling statement necessarily because it
16 was just an informal chat at the end of the day, this
17 is what's happening with this person and this is what's
18 happening with this piece of equipment, things along
19 those lines.

20 So it wasn't a formal briefing with Major
21 Clossan or whomever, it was simply a discussion,

1 basically a very informal back brief from myself to the
2 OIC.

3 Q I think what I was asking if you had a
4 major event where one of your analysts said something
5 disloyal, professes to have no loyalty to the country,
6 and you were reporting that to Major Clossan, so you
7 believed that was a major event, would that be captured
8 in any way, shape, or form in writing, documentation,
9 or otherwise?

10 A I guess I'm not understanding the question.

11 Q I can repeat it.

12 What I'm asking is: Like if let's say
13 Specialist Showman did come to you and say PFC Manning
14 just said, I had no loyalty to the country, the flag
15 means nothing to him, and I believe he's a spy, and
16 then you said, okay, that's serious. I'm going to take
17 it to Major Clossan and on the report what was just
18 said, would there be any sort of documentation when you
19 did that?

20 A You mean would I have brought documentation
21 to Major Clossan?

1 Q Or would it be created once you talked to
2 Major Clossan?

3 A I mean, it would be created normally by the
4 supervisor, and I would talk to Major Clossan
5 independently. So I don't know if that's the answer
6 you're looking for, sir.

7 Q I'm just wondering if there's some way we
8 can see writing on this.

9 Would a DROG -- do you know what a DROG is?

10 A Of course.

11 Q Would a DROG be something that might --
12 before we go to that question.

13 Your understanding, what's a DROG?

14 A Derogatory report would be any information
15 that the commander reports to -- hold on. A derogatory
16 report would be anything that we could use to present
17 to the commander that might affect the ability of a
18 soldier to be trusted with classified information.

19 Q And if a commander files a DROG, who does
20 that go to?

21 A It goes eventually to a central clearance

1 facility, I believe.

2 Q Why would it go there? What is central
3 clearance facility?

4 A They are the -- they maintain records and
5 can adjudicate the access personnel have to classified
6 information.

7 Q And when a commander files a DROG -- have
8 you ever seen this happen before?

9 A Yes, sir.

10 Q And when a commander files a DROG, is that
11 on any sort of paperwork?

12 A Yes, sir.

13 Q And what type of activities or events might
14 precipitate a DROG being filed?

15 A Any number. I mean --

16 Q Can you give us an example?

17 A Drug use, DUI, larceny, assault, spouse or
18 child abuse. I mean, any criminal activity would be
19 normal -- would normally initiate the commander being
20 notified that this might be an issue that would affect
21 a soldier's ability to handle classified information.

1 Q And let's just use one of your examples, a
2 DUI. How would a DUI be something that would affect a
3 soldier's ability to handle classified information?

4 A What a DUI essentially might show is that,
5 for one, a soldier might lack discretion. Two, alcohol
6 abuse is normally -- may cause activities that can have
7 the soldier blackmailed if he does something stupid.
8 It indicates that he might be -- he might believe that
9 certain rules apply to others but not to him. A lack
10 of judgment. A lack of maturity. Something like that.

11 Q And I guess if a DUI or some of the other
12 things you listed could result in a DROG, then would
13 somebody saying I don't have loyalty to the country,
14 the American flag means nothing?

15 CAPTAIN OVERGAARD: Objection, leading.

16 THE COURT: Overruled.

17 BY MR. COOMBS.

18 Q So would somebody saying, I don't have
19 loyalty to the country and the American flag means
20 nothing to me be something you would expect a DROG to
21 be filed on?

1 A Normally, yes. I would say yes.

2 Q Why?

3 A Because it would indicate that the person
4 making the statement could not be trusted with
5 information that was classified.

6 Q And in this instance here with PFC Manning,
7 are you aware whether or not if any DROG was filed
8 against him?

9 A Could you, please, repeat or rephrase?

10 Q Yes.

11 Are you aware of any DROG being filed
12 against PFC Manning, and we'll go before the
13 deployment?

14 A Prior to the deployment?

15 Q Yes.

16 A I am not aware.

17 Q Now, let's talk about the deployment. Are
18 you aware that a DROG being filed against PFC Manning
19 during the deployment?

20 A Yes, sir.

21 Q And I take it this was a DROG filed, it was

1 he was arrested?

2 A Yes, sir. Well, I'm not 100 percent sure
3 of the time. I don't recall whether the DROG was
4 initiated for the assault or whether it was initiated
5 because he was basically charged twice in a relatively
6 short span of time.

7 So I don't recall whether the derogatory
8 report was filed against PFC Manning in response to the
9 assault or in response to his arrest for disclosure.

10 Q In fact, was PFC Manning removed from the
11 SCIF prior to his arrest?

12 A Yes, sir.

13 Q And what was this in response to?

14 A It was in response to an assault, sir.

15 Q And when he was removed from the SCIF was
16 his -- are you aware whether or not action was taken to
17 on suspend his ability to get on a SIPR computer?

18 A I don't recall. I know he was removed from
19 the SCIF. Again, I don't recall a hundred percent
20 whether action was initiated to affect his access at
21 that time or whether it was initiated after he left the

1 theater.

2 Q Okay.

3 During the deployment did you ever write
4 any memorandums for record to document the behavior of
5 PFC Manning?

6 A Yes, sir.

7 Q In a moment I'm going to talk to you about
8 one of those, but do you recall doing one of them in
9 the December 2009 time frame?

10 A I'm trying to remember it was it 2008 or
11 2009, I don't --

12 Q I'll show it to you.

13 A Okay.

14 Q I'm showing you what's been marked Defense
15 Exhibit XX for identification. Can you look at that?

16 A Yes, sir.

17 (Witness reviewing document.)

18 Q Do you recognize that?

19 A Yes, sir.

20 Q And can you tell Colonel Lind what that is?

21 A Ma'am, this was a memorandum for record I

1 wrote in regard to Specialist Manning which I presented
2 to the -- I guess he was the combat stress officer in
3 relation to some behavioral issues that Specialist
4 Manning was exhibiting.

5 Q Now, when was this memorandum written?

6 A It says here 21 December 2009, sir.

7 Q Does that sound right to you?

8 A I mean, I'm just trying to remember the
9 time frame that we deployed. I just can't remember --
10 honestly, if it was 2008 or 2009, but.

11 Q Would you normally date memorandums the
12 correct date?

13 A Of course I would. So -- sure, I guess. I
14 guess that's right, sir. I guess so. Yes, sir.

15 Q And what's the subject line of the
16 memorandum?

17 A Behavior of Specialist Bradley Manning,
18 sir.

19 Q Do you reference activity of then I guess
20 Specialist Manning in the June and July timeframe of
21 2009?

1 A I do, yes, sir. Paragraph two.

2 Q And that behavior, who was that behavior
3 involving? Who was around at that time, do you recall?

4 A Myself, Specialist Showman, and I can't
5 remember if he was promoted or not at the time, and I
6 guess Specialist Manning, sir.

7 Q So this was an incident that you documented
8 that involved you, Specialist Showman, and then either
9 PFC or Specialist Manning, right?

10 A Yes, sir, that's correct.

11 Q Retrieving what has been marked Defense
12 Exhibit XX for identification.

13 Anywhere in that exhibit do you see -- and
14 you can look and take your time, but do you see
15 anything that references any sort of disloyal comments
16 made by PFC Manning or Specialist Manning to Specialist
17 Showman in I guess maybe the July/August time frame?

18 A (Witness reviewing document.)

19 Q Of 2009?

20 A (Witness reviewing document.)

21 I don't see anything that references that,

1 sir.

2 Q When you're documenting behaviors of PFC
3 Manning for behavior that might be of some concern, do
4 you think you would document that fact in this
5 memorandum?

6 A The disloyal comments facts?

7 Q Yes. Do you think that might be something
8 that you would document?

9 A I don't know if I would or not, and the
10 reason I might not have was the subject line of the
11 memorandum pertained to outbursts rather than other
12 comments.

13 So the intent of this memorandum for record
14 was to capture events that I thought might be relevant
15 and might be helpful to a behavioral health
16 professional when treating a patient, sir.

17 Q So with regards to if somebody said, I
18 don't have loyalty to the country, the flag means
19 nothing to me, you would consider that to be
20 potentially something that a behavioral health
21 specialist would want to know about, the person's

1 mental state?

2 A Maybe. I just, again, what the intent of
3 the memorandums for record was primarily to ensure that
4 I was providing a viewpoint from another perspective
5 regarding what I thought were behavioral health issues,
6 and I can't say entirely why I would have omitted that
7 information unless I either did not recall having heard
8 it or I didn't consider it relevant to a behavioral
9 health specialist sir.

10 Q Is there one more possibility and that
11 possibility being that it didn't happen; is that
12 possible?

13 A What didn't happen?

14 Q The statements.

15 A I mean, I guess it could be possible, sir.

16 Q And I understand you're saying you don't
17 remember Specialist Showman coming to you?

18 Do you think your memory would improve if
19 she came to you on more than one occasion with the same
20 complaint?

21 A Maybe, sir. I mean, it's possible.

1 Q And I guess if you don't remember her
2 saying this to you, am I correct that you don't
3 remember her coming to you on multiple occasions?

4 A About that specific statement, no, I don't
5 recall it.

6 Q And you don't recall or do you recall ever
7 addressing any sort of loyal disloyal statements
8 regarding PFC Manning at any time?

9 A Could you please rephrase or repeat. I'm
10 sorry.

11 Q Not a problem.

12 At any time -- now we talked about before
13 the deployment or whatnot.

14 A Yes, sir.

15 Q At any time do you recall addressing any
16 sort of disloyal statements by PFC Manning?

17 A Was this after he was arrested?

18 Q No. At any time.

19 A Well, then after he was arrested, whenever
20 we initiated that at that point, we initiated a DROG,
21 but before that, no.

1 MR. COOMBS: Retrieving this Exhibit XX
2 marked as Defense Exhibit XX.

3 THE COURT: Any objection?

4 CAPTAIN OVERGAARD: One moment, please,
5 Your Honor.

6 No, ma'am.

7 THE COURT: Defense Exhibit XX is
8 admitted.

9 MR. COOMBS: No further questions.

10 THE COURT: Redirect?

11 CAPTAIN OVERGAARD: Yes, ma'am.

12 CROSS EXAMINATION BY CAPTAIN OVERGAARD:

13 BY CAPTAIN OVERGAARD:

14 Q Cross just to clarify.

15 Mr. Atkins, you said that you didn't
16 remember Specialist Showman making the statement to you
17 or reporting it to Major Clossan, is that correct, the
18 disloyal statement that she said PFC Manning told her?

19 A I do not remember, correct, sir, yes,
20 ma'am.

21 Q Would one of your past writings help

1 refresh your memory?

2 A If it can, yes, ma'am.

3 CAPTAIN OVERGAARD: Retrieving Prosecution
4 Exhibit 197, ma'am.

5 BY CAPTAIN OVERGAARD:

6 THE COURT: What is it?

7 CAPTAIN OVERGAARD: It's a memorandum
8 written by Mr. Atkins for an appeal of an
9 administrative reduction.

10 BY CAPTAIN OVERGAARD:

11 Q I know this is kind of hard to read, but
12 can you read paragraph three and then just let me know
13 when you're done?

14 A (Witness reviewing document.)

15 First.

16 Q Just read it to yourself please?

17 A Sorry.

18 (Witness reviewing document.)

19 Q Does that help refresh your memory?

20 A What I would say is that it does not
21 refresh my memory of that -- of a specific statement

1 made by Specialist Showman in regards to his comments.

2 I see obviously that I wrote it, but having
3 reread it, having read it, does not bring back a memory
4 of a statement of her having said it, ma'am.

5 Q But in this statement you wrote that -- the
6 state?

7 MR. COOMBS: Objection, Your Honor.

8 THE COURT: Yes.

9 MR. COOMBS: She's trying to refresh
10 memory. She needs to move on.

11 THE COURT: You haven't refreshed his
12 recollection. Is there something else you'd like to
13 do?

14 BY CAPTAIN OVERGAARD:

15 Q Do you remember preparing this statement?

16 A Yes, ma'am.

17 Q And when was that, do you remember?

18 A It was I believe June of 2011 after my
19 administrative reduction board in which I was appealing
20 the decision to reduce me from master sergeant to
21 sergeant first class.

1 Q And when you wrote this memorandum, was
2 what you wrote in here accurate?

3 A I signed it, so I must have read it. So I
4 must have believed that it was accurate.

5 Q And this was you wrote this two years ago
6 is that correct?

7 A Yes, ma'am 2011 correct.

8 Q So when you wrote the memo, your memory
9 would have been probably better than it is now?

10 A Maybe. I mean, I can't say for certain,
11 but because I don't know if time is necessarily affects
12 my memory or not, but that's something that could be
13 determined as yes.

14 Q Mr. Atkins, would you please just read
15 paragraph three from this document?

16 MR. COOMBS: Objection, Your Honor,
17 foundation.

18 THE COURT: What's the objection.

19 MR. COOMBS: The individual hasn't said
20 that his memory was refresher at the time and
21 (INAUDIBLE) to report a foundation hasn't been

1 established.

2 THE COURT: Do you want to continue on with
3 the foundation? I'm sustaining.

4 BY CAPTAIN OVERGAARD:

5 Q You've agreed that two years ago was closer
6 to when this statement was actually made then today?

7 A Yes, ma'am.

8 Q And you would agree that you already said
9 that this was accurate?

10 A I would say that I signed it. So when I
11 read it I must have believed it to be accurate, yes.

12 Q So if you wrote something in this statement
13 you would think it's true, correct?

14 A The statement was composed by dictation I
15 believe with one of my lawyers, but when he completed
16 the -- when he completed writing the statement and
17 printed it I read it and at the time determined it to
18 be accurate and signed it.

19 Q You'd agree that if you remembered
20 something then that you don't remember now, your memory
21 would have been better about that particular event at

1 the time that you wrote it?

2 A Could you rephrase, please?

3 Q Yes. If you wrote something in this
4 statement that you don't remember right now, would you
5 agree that your memory must have been better than it is
6 right now?

7 A It recalled the incident, yes, ma'am.

8 Q I'm handing the witness prosecution --

9 MR. COOMBS: I'm going to object just upon
10 the witness' testimony. I believe now this is a
11 statement by his attorney as opposed to him so we had
12 object to that.

13 THE COURT: I'm going to overrule it.

14 Go ahead.

15 BY CAPTAIN OVERGAARD:

16 Q Would you please just read out loud number
17 three on your memorandum?

18 A Yes, ma'am.

19 First the government called Specialist
20 Joanna Showman as a telephonic witness. Specialist
21 Showman, immediate supervisor of PFC Manning for a

1 period in Iraq, properly testified and stated that I
2 had reservations about clearing PFC Manning into
3 theater and informed the chain of command about my
4 concerns.

5 Specialist Showman also correctly stated
6 that I informed Major Clifford Clossan, brigade S2
7 about PFC Manning's disloyal statements prior to
8 deployment.

9 Q You can stop there.

10 A Yes, ma'am.

11 Q Retrieving Prosecution Exhibit 197.

12 THE COURT: What's the date of that
13 statement?

14 CAPTAIN OVERGAARD: 21 June 2011.

15 BY CAPTAIN OVERGAARD:

16 Q Now, you testified that you don't remember
17 whether or not there was a written counseling made at
18 the time?

19 A Correct, yes, ma'am.

20 Q And it's that you don't remember not that
21 you don't know whether or not there was one?

1 A I don't recall and I don't remember I
2 believe, yes, ma'am.

3 Q And in the August 2009 time period, was
4 that right before you were deploying for your fourth
5 time?

6 A Yes, ma'am.

7 Q And was that -- what were you doing during
8 that time?

9 A Likely we were either uploading equipment,
10 inspecting sensitive items, conexes, moving equipment
11 to the airfield. I don't know if we went on leave at
12 the time, but that may have been one of the things that
13 we were looking at, determining the order of personnel
14 deploying, who was going to fulfill what roles, who was
15 going to carry what equipment, who was going to bring
16 with computers, when certain personnel would be needed
17 at which times in theater.

18 There were a lot of considerations that
19 Major Clossan and I covered prior to the deployment,
20 ma'am.

21 Q So you had a lot going on at the time?

1 A Yes, ma'am.

2 Q Was it a stressful time?

3 A Yes, ma'am.

4 Q What are some reasons that maybe something
5 might not get written into a counseling?

6 A One reason is that we had -- I mean, people
7 were busy preparing for deployment. It could have been
8 that the computers that we normally -- or the printers
9 that we actually use were packed. It may have been
10 that it just slipped people's minds because everyone
11 had specific tasks which had to be accomplished in
12 preparation in support of the combat mission, anything
13 along those lines may have trumped, I guess, a
14 counseling statement, or something entirely different.
15 I just don't recall.

16 Q You don't always do written counseling
17 statements, do you?

18 A Well, I mean, myself as the NCOIC?

19 Q Yes.

20 A I would normally leave those tasks to the
21 first-line supervisor. My counseling statements would

1 normally go over my section sergeants and things along
2 those lines. So it would be junior -- junior leaders
3 would counsel their subordinates. I would only counsel
4 my section NCOs.

5 So a normal behavioral or disciplinary
6 counseling statement would not be something which I
7 would normally compose when it concerned a junior
8 soldier who had a first-line supervisor.

9 Q Mr. Coombs talked about DROGs?

10 A Yes, ma'am.

11 Q Ands before the end of the deployment's
12 time period you didn't file a DROG for any of PFC
13 Manning's behavioral issues?

14 A Yes, ma'am, that's correct.

15 Q And do you know why not?

16 A Could you please rephrase the question?

17 Q Sure.

18 Was there any reason that you didn't feel
19 it was necessary to file a DROG before when a DROG was
20 actually filed?

21 A I don't recall. I can't say for certain.

1 Maybe I'm tripping on the question. I'm sorry.

2 Could you please try one more time?

3 Q Sure.

4 You said that a DROG, you didn't remember a
5 DROG being filed before the -- before about the
6 May 2010 time period?

7 A That's correct.

8 Q And were some of the other behavioral
9 issues that you spoke about, for example, in the
10 memorandum that Mr. Coombs showed you?

11 A Okay.

12 Q Why wouldn't you have done a DROG for that?

13 A Well, there was -- there were a couple of
14 reasons. One, I needed -- we actually had a mission
15 going on, so I did need soldiers to perform. While we
16 were concerned with some of Specialist Manning's or PFC
17 Manning's behavioral issues, we felt that we had in
18 placed measures to mitigate risk, keep him functional
19 and effective while maintaining combat effectiveness in
20 theater.

21 Q One moment.

1 A Yes, ma'am.

2 CAPTAIN OVERGAARD: No further questions,
3 Your Honor.

4 REDIRECT EXAMINATION BY MR. COOMBS:

5 BY MR. COOMBS:

6 Q Mr. Atkins, you gave several statements in
7 this case, correct?

8 A Sworn statements?

9 Q Yes.

10 A Yes, sir.

11 Q I'm showing you now what's been marked YY
12 for identification. Feel free to look at that and tell
13 me what that is?

14 A (Witness reviewing document.)

15 It's a sworn statement I wrote on 10
16 June 2010, sir.

17 Q And do you remember why you wrote this
18 sworn statement?

19 A It was in support of an initial
20 investigation against PFC Manning after his arrest,
21 sir.

1 Q And whose handwriting is that statement in?

2 A It's mine, sir.

3 Q I'm now showing you defense Exhibit ZZ for
4 identification. Can you look at that?

5 A (Witness reviewing document.)

6 Yes, sir.

7 Q Now, what's that?

8 A It's a sworn statement I wrote on 3
9 July 2010 at FOB Hammer Iraq to the investigation of
10 PFC Manning, sir.

11 Q Whose handwriting is that in?

12 A It's mine, sir.

13 Q Do you recall who was its CID that was
14 asking these questions?

15 A I don't remember, sir. I mean, it may have
16 been -- I think it was. I don't remember exactly, sir.

17 Q I'm showing you now Defense Exhibit AAA for
18 identification. Will you look at that and tell me what
19 that is?

20 A (Witness reviewing document.)

21 It's a sworn statement 15 July 2010 and a

1 question list in regards to a 15-6 investigation
2 written by a chief network engineer for J6 tactical
3 operations, sir.

4 THE COURT: I'm sorry, what was the date
5 you said of the statement?

6 THE WITNESS: Ma'am, it was 15 July 2010.

7 BY MR. COOMBS:

8 Q Now, in any of these three statements, the
9 one on June 10th, 2010, July 3rd, 2010, or July 15,
10 2010, do you reference any disloyal statements
11 allegedly made by PFC Manning?

12 A Can you give me a couple of minutes to
13 check them out, sir?

14 Q Take the time you need.

15 A Thanks.

16 (Witness reviewing document.)

17 Could you please repeat the question, sir.

18 Q In any one of those statements, do you
19 reference disloyal comments being allegedly made by PFC
20 Manning?

21 A No, sir.

1 Q And, again, these statements are June 10th,
2 July 3rd, and July 15th of 2010?

3 A Yes, sir.

4 Q Were the events of what happened fresher in
5 your mind at the time that you wrote those statements
6 in your own handwriting and currently now on the stand?

7 A I guess time-wise, yes. I'm not --
8 time-wise, yes, I guess so. Yes, sir.

9 Q If at the time you had known about disloyal
10 statements, do you think that might be something you
11 would include in a sworn statement?

12 A Likely, yes, sir.

13 Q In this instance why do you think it would
14 be likely when CID is asking you questions and
15 investigating this case that you would include that
16 information if you knew it?

17 A Because it was pertinent, sir.

18 Q And the fact that those allegations are not
19 present in those statements, what does that tell you?

20 A It tells me that I didn't write them, sir.

21 Q Is it also possible -- tell you that it

1 didn't happen?

2 A It tells me that when I wrote these
3 statements I did not recall nor remember those
4 statements, sir.

5 Q And all of these statements are made before
6 the statement that the trial counsel shared with you on
7 22 June 2011, right?

8 A Yes, sir.

9 Q Let me retrieve that exhibit.
10 I'm handing you Prosecution Exhibit 197 for
11 identification.

12 A Yes, sir.

13 Q That's not in your handwriting, is it?

14 A No, sir.

15 Q And I believe you said on cross that your
16 attorney wrote this for you?

17 A He was the one who was entering it on the
18 document, yes, sir.

19 Q And what was this memorandum written -- I
20 think you had testified actually on cross that this was
21 in response to the great induction board?

1 A It was written as an appeal to the -- in
2 response to my reduction.

3 Q At that point I guess the board had already
4 made the determination to reduce you?

5 A Yes, sir.

6 Q And if I'm understanding you correctly
7 then, this was going to the convenient authority or on
8 the approval authority say don't approve the board's
9 recommendation?

10 A It was an appeal to dismiss the board's
11 recommendation, yes, sir.

12 Q And at the time that you wrote this, did
13 you want to be reduced in rank? At the time your
14 attorney wrote this for you, did you want to be reduced
15 in rank?

16 A No, sir.

17 Q When you wrote this, was that your goal
18 basically not to be reduced in rank?

19 A The goal of the appeal, yes, was not to be
20 reduced.

21 Q I'm showing you now Defense Bravo Bravo for

1 identification. Take a look at that and let me know --
2 first of all, take a look at that and tell me if you
3 know what it is?

4 A From what I recall this was an appeal of my
5 GOMR, I believe.

6 Q And when did you -- when was this
7 submitted? What was the date on this memorandum?

8 A 19 April 2011, sir.

9 Q And this one is handwritten or typed?

10 A It's typed, sir.

11 Q And who wrote this for you or did you write
12 it?

13 A I don't -- I don't recall. Hold on.
14 I don't think I wrote it, but I don't
15 recall.

16 Q Can you turn to the third page for me. Do
17 you see a signature on that page?

18 A Yes, sir.

19 Q And whose signature is that?

20 A It's mine, sir.

21 Q And above that do you see a paragraph five

1 that's indented?

2 A Yes, sir.

3 Q Can you read that paragraph?

4 CAPTAIN OVERGAARD: Objection.

5 THE COURT: Sustained.

6 THE WITNESS: What does that mean?

7 THE COURT: That means don't read it.

8 BY MR. COOMBS:

9 Q It means don't answer the question for a
10 second.

11 MR. COOMBS: Your Honor, I am not offering
12 it for the hearsay purpose. So I guess before.

13 THE COURT: I made her go through the
14 foundation refreshing recollections.

15 MR. COOMBS: I'm offering it for a prior
16 existing statement. So not offering for hearsay
17 purpose, I'm not trying to get it under prior
18 recollection recorded. I'm offering it as a prior
19 existing statement. It predates the statement that the
20 trial counsel solicited from the witness.

21 THE COURT: Why don't you have him read the

1 paragraph and just ask him questions about it?

2 MR. COOMBS: Sure.

3 BY MR. COOMBS:

4 Q Could you go ahead and read that paragraph?

5 A Out loud?

6 THE COURT: No. You can just go ahead and
7 read it to yourself.

8 THE WITNESS: (Witness reviewing document.)
9 Okay, sir.

10 BY MR. COOMBS:

11 Q So reading that, seeing that paragraph, did
12 you have a memory at that point of whether or not PFC
13 Manning made any statements saying he had a lack of
14 loyalty to the United States or to the United States
15 flag?

16 A Could you please rephrase?

17 Q Right.

18 After looking at that, did you have a
19 memory at the time of 29 April 2011 that indicated
20 whether or not you knew that PFC Manning made any
21 statements that indicated a lack of loyalty to the

1 United States or to the United States flag?

2 A No.

3 Q Do you believe at that point that PFC
4 Manning had made such a statement?

5 A It says I don't recall.

6 Q I'm asking from your standpoint, did you
7 believe at that point?

8 A I did not believe at that point.

9 Q And, again, at the time of this was done,
10 this was a memorandum that -- was this a memorandum
11 that you submitted?

12 A I mean, I signed it. From what I recall
13 there was a JAG officer who represented me and assisted
14 me with its composition, and from what I recall that it
15 was submitted through SJA channels. So I don't think
16 that I submitted it myself. I don't think I did, sir.

17 Q And before you signed this document, did
18 you read documents before you sign them?

19 A Yes, sir.

20 Q And this document the fact that you signed
21 it did that indicate to you whether or not you believed

1 at the time those statements were true or not?

2 A Could you please rephrase?

3 Q At the time that you signed this statement,
4 the fact that you did, would that indicate to you
5 whether or not you believed those statements were true
6 at the time?

7 A Yes, sir.

8 Q And how so?

9 A Because I signed it.

10 Q And at the time I guess right now you're
11 saying you don't remember, but at the time you signed
12 it, was your -- obviously your memory of whether or not
13 they were truthful statements accurate in your mind?

14 A In my mind what I said in here was truthful
15 at that time.

16 Q So now I'm retrieving you to this exhibit
17 Bravo Bravo for identification from you. So Defense
18 Exhibit Bravo Bravo is 29 April 2011 and Prosecution
19 Exhibit 197 is 22 June 2011.

20 Do you know if your memory gets better or
21 worse in time or does it change?

1 A I don't know if it fluctuates. I
2 haven't -- I'm still going through the evaluation
3 process, but I would say there is fluctuation in my
4 memory that might or might not be related to time. So
5 I can't -- I'm not a hundred percent sure at this time,
6 sir.

7 MR. COOMBS: Thank you.

8 CAPTAIN OVERGAARD: No further
9 questions, Your Honor.

10 THE COURT: Temporary or permanent.

11 MR. COOMBS: Temporary, Your Honor.

12 THE COURT: Mr. Atkins, you're temporarily
13 excused. Please don't discuss your testimony or
14 knowledge of the case with anyone other than the
15 lawyers or the accused while the trial is going on.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: You're free to go.

18 THE WITNESS: Thank you ma'am.

19 MR. COOMBS: Ma'am, if we could have a
20 ten-minute comfort break and then we have one more
21 witness, which I still believe the government has an

1 issue on. I don't know if we've had a ruling.

2 THE COURT: Who is it?

3 MR. COOMBS: This is Chief Ehresman.

4 THE COURT: You all were going talking
5 about SigActs, and, for the record, counsel and I
6 (INAUDIBLE) had an 802 conference this morning where
7 this was raised on two different SigActs. I basically
8 told the parties I had no idea what they were talking
9 about. So let's put this on the record.

10 MR. COOMBS: The government in their
11 representation of rebuttal for bringing in Special
12 Agent Shaver, one of their purposes was to lay the
13 foundation for a SigAct. They believe that that
14 rebutted the testimony of Mr. Madarous on a particular
15 incident that --

16 THE COURT: Mr. Madarous or Sergeant
17 Satler.

18 MR. COOMBS: Satler, I'm sorry. Now I
19 think on a particular instant of PFC Manning talking to
20 him regarding something that he was concerned about.

21 The government indicated that they were

1 offering that information in to rebut, there was an
2 incident in December that troubled PFC Manning and,
3 in fact, the incident occurred much later.

4 Again, maybe to argue that any sort of
5 concern about this incident did not prompt or
6 suggest his motive to release certain information.

7 The Defense offered what is I believe
8 Defense Exhibit echo, a SigAct that's been admitted
9 into evidence, that is a SigAct from the December
10 time frame.

11 Mr. Ehresman will come in and talk about
12 that issue, the fact that that was something that
13 was discussed within the S2 section, that incident.

14 So to the extent that the government is
15 in their rebuttal trying to suggest there was
16 nothing that caused PFC Manning concern in December
17 and, in fact, because of the SigAct, it was
18 something in the March/April time frame. This is
19 what is rebutting that fact.

20 THE COURT: So you called in Mr. Satler to
21 say that there was something troubling PFC Manning in

1 December. The government -- and based on your Defense
2 Exhibit Echo?

3 MR. COOMBS: No. He came in to testify
4 about a particular incident, and that incident he could
5 not recall. If you remember his memory was not that
6 good because of the passage of time of when this
7 occurred.

8 THE COURT: Did you show him the SigAct?

9 MR. COOMBS: Did not, ma'am, no. It was
10 based solely upon the incident. So he testified about
11 an incident where PFC Manning was upset about certain
12 individuals being arrested, what was alleged at that
13 time, anti-Iraqi literature, and he talked about how
14 PFC Manning was upset by that.

15 THE COURT: Is that SigAct that you talked
16 about or introduced as a Defense exhibit, is that the
17 SigAct that you talked about that triggered and that
18 documented this event?

19 MR. COOMBS: No, ma'am. So here's how it
20 plays out. We've got him coming in. The witness,
21 Mr. Satler, coming in to talk about the event. He

1 testified that that event occurred in December time
2 frame. And he couldn't remember if it was December
3 before or after Christmas. He thought it was right
4 around the time frame.

5 The government then in rebuttal said we
6 want to bring in Special Agent Shaver to talk about
7 that instant. We have the SigAct, and we found that
8 SigAct. It was on PFC Manning's computer, and we
9 want to offer that to show that there was -- rebut
10 his testimony that happened in December and it shows
11 that nothing happened in December, that this
12 happened in March.

13 In other words, then to argue that
14 anything he might have been upset about was only in
15 March. He already closed up. So that could not
16 have informed him of his decision.

17 So what we are trying to do know is
18 offer the SigAct, whenever, offer the SigAct in
19 December off the testimony of Chief Ehresman to say
20 that that was an issue, the December SigAct separate
21 from what Mr. Satler testified about was an issue

1 that was a topic of discussion in the S2 section.

2 So that the government gets up in their
3 closing and says, what do you know, there's nothing
4 happening in December that he was concerned about.
5 It was in March after he already made the decision
6 to release stuff. So, you know, that's his movie or
7 whatnot is not legitimate or not pure.

8 THE COURT: So the SigAct you're talking
9 about that's already been admitted into evidence is the
10 one you're referencing that happened in December?

11 MR. COOMBS: Yes, Your Honor.

12 THE COURT: And the other one is later on.
13 Can I see both of the SigActs? Which ones are we
14 talking about?

15 MR. COOMBS: Echo.

16 THE COURT: Okay.

17 MR. COOMBS: So Chief Ehresman would come
18 in roughly around five questions to talk about the fact
19 that he was aware of the instant and it was discussed
20 in the S2 section.

21 THE COURT: What's the government's

1 objection?

2 MAJOR FEIN: The government's objection is
3 that this is not relying on actually occurred
4 procedural. We're in surrebuttal. What actually
5 happened, Your Honor, the Defense admitted with Special
6 Agent Shaver defense exhibit (INAUDIBLE) no witness,
7 not a single witness, the defense testified about that
8 SigAct other than Special Agent Shaver who pulled it.

9 The defense then offered Satler as a
10 witness on their case who testified in an event that
11 the question was something to the effect. Do you
12 recall an instant where Manning brought to you
13 concern of Iraqi being arrested by Iraqi police, and
14 he said, I do remember that, and then the dialogue
15 was what Satler remembered. The government offered
16 a SigAct of that exact event found on PFC Manning's
17 rebuttal testimony to Satler's testimony.

18 What the defense wants to do is to
19 introduce new evidence unrelated to Satler's
20 testimony in order to somehow talk about what they
21 admitted in their case in chief, but didn't have

1 anyone else testify about. This is completely new
2 evidence, and it's not rebutting anything that the
3 government has presented in rebuttal. It is
4 again -- we presented SigAct that explained what
5 Sergeant Satler would testify about.

6 It was an event dealing with the
7 Moroccans is what he said on the record and he
8 didn't remember the time. So now he provided proof
9 of what that time was and that was what the evidence
10 was presented.

11 So the government objects and it's
12 completely outside have the scope of rebuttal and
13 it's just a way to get additional evidence in, and
14 it's new evidence.

15 THE COURT: What would the government's
16 position be if the defense asked me to reopen the case?

17 MAJOR FEIN: Ma'am, if that happens,
18 then -- I think the outcome there would be the same
19 outcome here, Your Honor. If it's new evidence then
20 the government should at least have the opportunity,
21 unfortunately trying to move this on to exam that

1 (INAUDIBLE) rebuttal evidence.

2 It would be the same effect in the court
3 was to order or allow the case to be reopened or
4 allow this new additional evidence in their
5 surrebuttal then we would ask for some time, even if
6 it's after this session, to look at that and see if
7 there's additional rebuttal evidence.

8 THE COURT: All right.

9 MAJOR FEIN: Your Honor, the government's
10 contention that is this is completely new evidence.
11 It's not related at all to the rebuttal case. The
12 defense had their opportunity, just like the government
13 had their opportunity with the Apache e-mail from
14 yesterday and everything else in order to bring that
15 evidence in. This is surrebuttal based off of
16 rebuttal.

17 THE COURT: Defense?

18 MR. COOMBS: Your Honor, I find it
19 interesting that, to say the least, that Major Fein
20 would take that position given yesterday we spent four
21 hours on WGet which was four hours of WGet to rebut

1 apparently one small fact of Chief Ehresman's
2 testimony.

3 And essentially what the government did
4 was go into a whole new area that was not even
5 raised on our defense case, and when we objected
6 saying it's not proper rebuttal. The Court did one
7 of two things.

8 The Court said, well, I think it's an
9 issue and I have my own independent fact-finding
10 power so I'm going to bring it in under that
11 provision or you thought it was proper rebuttal.

12 THE COURT: Well, before we even get there,
13 whether it's proper rebuttal or not, I'm going to allow
14 it to reopen your case under RCM913C5. So you can
15 present the evidence.

16 MR. COOMBS: Your Honor, if we take a
17 brief comfort break then Chief Ehresman will have
18 roughly five questions.

19 THE WITNESS: All right. Is ten minutes
20 sufficient?

21 MR. COOMBS: Yes, Your Honor.

1 MAJOR FEIN: Yes, ma'am.

2 THE COURT: The Court is in recess.

3 (Deposition recessed at 3:26 p.m.)

4 (Deposition resumed at 3:36 p.m.)

5 (Missed first part of the question.)

6 DIRECT EXAMINATION BY MR. COOMBS:

7 BY MR. COOMBS:

8 Q What do you recall?

9 A I recall either a convoy, a U.S. convoy
10 closing down or stopping and POV passing them up and
11 hitting an either IAD or EFP.

12 Q And were soldiers in the S2 section talking
13 about that EFP incident?

14 A Yes, sir.

15 MR. COOMBS: Thank you.

16 THE COURT: Cross?

17 CAPTAIN OVERGAARD: Yes, ma'am.

18 CROSS EXAMINATION BY CAPTAIN OVERGAARD:

19 BY CAPTAIN OVERGAARD:

20 Q Do you remember if there was any reaction
21 (INAUDIBLE)?

1 A Just the typical reaction.

2 Q What's a typical reaction?

3 A Going through what pros and cons what helps
4 America, what didn't help it, how can we prevent this
5 from happening in RAO.

6 Q This was no cheering?

7 A Not that I remember.

8 Q Not celebrating?

9 A No, ma'am.

10 Q Do you know if PFC Manning was there?

11 A I'm not sure, ma'am.

12 CAPTAIN OVERGAARD: Thank you.

13 REDIRECT EXAMINATION BY MR. COOMBS:

14 BY MR. COOMBS:

15 Q Were you present at the time of the
16 incident?

17 A I was in the office when the first message
18 came across, sir.

19 THE COURT: What incident?

20 MR. COOMBS: The EFP incident, the SigAct.

21 THE COURT: Present at the scene?

1 MR. COOMBS: I'm sorry. Let me clarify.

2 BY MR. COOMBS:

3 Q Were you present in the S2 section at the
4 time that this EFP incident occurred?

5 A Yes, sir.

6 Q And what time was that?

7 A I don't remember if this was day or night.
8 I was just in there, sir.

9 Q Do you know if then Specialist Manning was
10 present?

11 A I do not, sir.

12 Q When you say do you not know, you don't
13 remember or do you believe it was?

14 A I don't remember who was in there, sir.

15 Q And what do you recall about the POV, if
16 anything, what happened to it?

17 A Just that it got hit, sir. I don't
18 remember any details about it.

19 Q And you were asked about cheering. Do you
20 recall whether or not EFP instances were, with regards
21 to the brigade, were I guess important issues?

1 A Very important.

2 CAPTAIN OVERGAARD: Objection, leading.

3 THE COURT: Go ahead. Overruled.

4 BY MR. COOMBS:

5 Q Why are they important?

6 A Because those are high priority things that
7 happen are AO along on IAD, DBIDs, and those things
8 were the big things that happened that we wanted to try
9 to prevent.

10 Q And during -- were EFPs and IADs something
11 that caused a lot of problems with American soldiers?

12 A Yes, sir.

13 Q And how so?

14 A Because they're the ones that were taking
15 out the most casualties at that the time, sir.

16 Q Do you recall if when information was
17 brought out that this EFP did not result in any
18 American deaths or injuries whether or not individuals
19 celebrated that?

20 A No, sir.

21 Q When you say you don't recall, are you

1 saying that it didn't happen or you don't recall it
2 happened or you don't remember if that happened?

3 A I don't remember that happening, sir.

4 MR. COOMBS: Thank you.

5 THE COURT: Temporary or permanent?

6 CAPTAIN OVERGAARD: One final question.

7 THE COURT: Go ahead.

8 RECROSS EXAMINATION BY CAPTAIN OVERGAARD:

9 BY CAPTAIN OVERGAARD:

10 Q When you said you didn't recall, you didn't
11 recall what?

12 A As far as that last question, ma'am.

13 Q Yes.

14 A I don't recall. I don't remember specifics
15 of any of that. I don't remember who was in there. I
16 don't remember the time. I don't remember the results.
17 I just remember the actual event happening because it
18 was one of the only ones that happened like that.

19 Q And would you remember if they were
20 celebrating after an event like this?

21 A I think would it stand out.

1 Q Do you remember there being celebrating?

2 A I do not, ma'am.

3 CAPTAIN OVERGAARD: Thank you.

4 REDIRECT EXAMINATION BY MR. COOMBS:

5 BY MR. COOMBS:

6 Q You were in the Talk at the time?

7 A No, sir. I was in the SCIF, sir.

8 Q So you don't know about any celebration, if
9 any, in the Talk?

10 A I was not there, so I couldn't tell you,
11 sir.

12 MR. COOMBS: Thank you.

13 No further questions.

14 THE COURT: Temporary or permanent?

15 MR. COOMBS: Temporary, Your Honor.

16 THE COURT: Chief Ehresman, once again,
17 you're temporarily excused. Please don't discuss your
18 testimony or knowledge of the case with anyone other
19 than counsel or the accused while the trial is still
20 going on.

21 MR. COOMBS: Your Honor, the defense

1 rests, and then under RCM913C5 because we reopened our
2 case and rested we would ask the Court, to ask PFC
3 Manning his decision not to testify.

4 THE COURT: All right.

5 PFC Manning, we have reopened your case.
6 You not testify. The defense rested. Was that your
7 decision?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Thank you.

10 Government, once again, I allowed them
11 to reopen the case. Do you have any additional
12 rebuttal?

13 MAJOR FEIN: The United States asks for
14 some time to just review our notes and get back to the
15 Court today and make that decision?

16 THE COURT: All right.

17 MAJOR FEIN: Also we would ask for an 802
18 just to talk about scheduling.

19 THE COURT: That's what I was just going to
20 suggest. What I'd like to do is allow you some time to
21 discuss if you have anything else to present. We need

1 to have an 802 to discuss scheduling. We had initially
2 made the closing arguments on Tuesday and I don't think
3 that's going to happen.

4 So we will head back on the public
5 record once again once we finalize all of they these
6 things. How long of a recess would you like?

7 MAJOR FEIN: Ma'am, can we come back on the
8 record at 1730 and that will allow enough time to talk
9 to 802 for the government to review its notes and if
10 it's earlier we can a announce that unless you'd rather
11 go earlier and we ask for more time.

12 THE COURT: You need that much time?

13 MAJOR FEIN: Ma'am, it's reviewing all of
14 the different witnesses for the -- I understand it's
15 only two questions. Ma'am, can we do 1630 and if we
16 need more time we'll ask.

17 THE COURT: Let's do that. The Court is in
18 recess until 1630.

19 (Hearing recessed at 3:45 p.m.)

20 (Hearing resumed at 4:45 p.m.)

21 THE COURT: The court is called to order.

1 Let the record reflect that all parties are present
2 when the Court last recessed are again in the Court.

3 Major Fein, what is the government's
4 position with respect to additional rebuttal?

5 MAJOR FEIN: Your Honor, the United States
6 does not request any additional rebuttal.

7 THE COURT: All right. During the recess I
8 was handed Appellate Exhibit 612, which is a
9 prosecution notification to the Court on global address
10 list evidence.

11 Defense, have you had an opportunity to
12 see that?

13 MR. COOMBS: Yes, Your Honor.

14 THE COURT: Do either sides have additional
15 argument to make with respect to this?

16 MR. COOMBS: The defense would just ask the
17 Court to, as you read through this, there's several
18 section where the trial counsel makes a conclusion. I
19 understand this is their argument to you as how they
20 prove their case, but the conclusions aren't supported
21 by the evidence.

1 So when the Court looks at it, if you
2 would, especially when they say that 25-2 prohibits
3 the act of downloading e-mail addresses under
4 personal computer, that is a conclusion by the
5 drafter of this document. That's not -- that's
6 actually not supported by the witnesses testimony
7 who testified.

8 Additionally, the person indicates that
9 there would be no reason to do this and that PFC
10 Manning could not have sent e-mails from his
11 personal computer. Also facts that are contradicted
12 by the evidence.

13 So the as the Court reads through the
14 conclusions, if you would verify it with the actual
15 evidence that was elicited.

16 THE COURT: All right. I will do that.

17 The government, let me ask you what is
18 an excultration (ph) of the GAL.

19 MAJOR FEIN: Ma'am, the excultration of
20 the GAL is the unlawful taking of the GAL.

21 THE COURT: That's what an excultration is?

1 MAJOR FEIN: That's our use on the word.
2 It's derived from actual evidence. That's the reason
3 we used the word.

4 THE COURT: All right. The Court will take
5 that under advisement when it goes through its rule on
6 all of the 641 issues.

7 The court had an 802 conference and have
8 worked out a schedule for the next couple of weeks.
9 Before I get to that, I do want to announce on the
10 record that there had been some cell phone
11 violations in the media operations center. So there
12 will be some additional security measures in place
13 to ensure that there are no cell phones in the
14 future in the media operations center.

15 I advise the public once again, cell
16 phones are not allowed in the courtroom or in the
17 media operations center.

18 Now, for the schedule. The closing
19 arguments will begin Thursday the 25th of July at
20 0930. I'll announce my ruling on the 641 issues
21 prior to closing arguments and then we'll go into

1 closing argument.

2 Following closing arguments by counsel
3 the Court will close the court to deliberate. Over
4 the next several days the Court will open and close
5 the court for deliberations.

6 How that works is, we come into court,
7 we open the court, we close the court, take about
8 two minutes. I'll deliberate. At some point during
9 the day I can take a recess and come back into court
10 and just open the court and close the court again
11 and then just go back in and do the same thing for
12 as long as it takes.

13 We have sentencing tentatively scheduled
14 to start on the 31st, that's Wednesday the 31st of
15 July at 0930, and I say tentatively because that
16 depends on the status of deliberations.

17 If the Court needs further time to take
18 deliberate the Court will take further time to
19 deliberate. And there will definitely be sentencing
20 in this case because of PFC Manning's pleas.

21 Is there anything that the Court has

1 failed to address?

2 MR. COOMBS: No, Your Honor.

3 MAJOR FEIN: Your Honor, may I have a
4 moment.

5 THE COURT: Yes.

6 MAJOR FEIN: No, ma'am.

7 THE COURT: Anything we need to address
8 before we recess the Court until Thursday the 25th
9 of July.

10 MR. COOMBS: No, Your Honor.

11 MAJOR FEIN: No, Your Honor.

12 THE COURT: The Court is in recess.

13 (Whereupon, at 5:08 p.m., hearing was adjourned.)
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